



**Testimony in Support of**  
**Senate Bill 361 An Act Concerning Certificate Of Need Requirements For Medical Devices,**  
**Equipment and New Technology**  
**Public Health Committee**  
**February 27, 2013**

Senator Gerratana, Representative Johnson and members of the Public Health Committee, on behalf of the close to 7,500 physicians and physicians in training of the Connecticut State Medical Society (CSMS) and the American College of Surgeons Connecticut Chapter (ACP), thank you for the opportunity to provide this testimony to you today in support of Senate Bill 361 An Act Concerning Certificate of Need Requirements for Medical Devices, equipment and New Technology.

Since the inception of the Certificate of Need Process (CON) decades ago, CSMS has continually raised concerns about the subjective process that establishes an expensive and time consuming requirement for physicians that is unnecessary and simply delays access to care for patients. It is a process in which applicants are provided no certainty that meeting specific guidelines, criteria, policies and procedures is a guarantee of receipt of a CON. As we continue with the recruitment and retention of physicians, we support SB 361 for the fact that it would remove an overwhelming burden placed on physicians through the CON process.

Many CON programs originated from a repealed federal mandate in 1974 which was intended to control health costs by eliminating excess supply. States were offered incentives under this law to implement CON programs. The CON movement was aimed at controlling the expansion of capacity due to cost based reimbursement modes. However, after several changes in reimbursement models within the Medicare program, ultimately adopted by private payers and state agencies, in 1986 the federal government reversed itself as Congress felt that the CON laws had failed to fulfill its purpose of reducing the nation's health care costs.

In their 2004 report commenting on state CON laws "Improving Health Care: A dose of Competition," the Federal Trade Commission/Department of Justice (FTC/DOJ) stated that "CON programs pose serious anticompetitive risks that usually outweigh their purported economic benefits." As a result, the FTC/DOJ urged states to rethink their CON laws. Subsequently, FTC/DOJ has weighed in or issued joint statements in several states essentially

indicating that CON laws are a “regulatory barrier to entry, which by their nature are an impediment to health care competition.”

Although changes in CON requirements in Connecticut were recently altered by Public Act 10-179, the outcome of the legislation and the subsequent work of the established Scanner Work Group, added to an already complex and time consuming process instead of breaking down unnecessary and anticompetitive barriers to entry. Policies and procedures continue to rely on the subjectivity of the Department of Public Health and do not provide any certainty to an applicant regarding the potential for success. This is not only a burden on physicians, but patients who often cannot find the care they require because of the limited availability of technology and associated services, or the high costs of existing services as a result of the anti-competitive nature of the CON process and associated awards.

By eliminating the CON as contained in SB 361, Connecticut can realize the cost savings in the health care system that the use of new technology may generate through improved procedural capacity, efficiency and quality and likely reduced cost in the provision of care. In addition, savings would be realized by the remove of significant administrative and litigation costs incurred by both CON applicants and the Department of Public Health during the course of the process. Finally, it would eliminate a system in which hospitals and other incumbents may themselves commence costly capital construction projects in order to prevent competitors from establishing a need for a health care service or equipment.

Please support SB 361 so that greater access to medical care services can be afforded to patients through the elimination of the existing state sponsored and supported anticompetitive process and behavior. This is an artificial and non-market driven approach to reducing costs that has backfired because by reducing competition costs have skyrocketed for certain procedures and tests, and new technology and associated medical care has been slow to the market in Connecticut, though widely used and adopted elsewhere.